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March 13, 2007

To: Supervisor Zev Yaroslavsky, Chairman  
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Supervisor Don Knabe  
Supervisor Michael D. Antonovich

From: David E. Janssen  
Chief Administrative Officer

**WASHINGTON, D.C. UPDATE**

**Pursuit of Position on Section 1011 Undocumented Immigrant Emergency Medical Care Funding**

Section 1011 of the Medicare Modernization Act (MMA) of 2003 includes an appropriation of \$250 million a year for Federal Fiscal Years (FFYs) 2005 through 2008 to reimburse health providers for the cost of emergency medical care provided to undocumented immigrants. Under the Act, a formula allotment is allocated to each state, which may be carried over into subsequent years until expended. California received allotments totaling \$70.8 million in FFY 2005, \$66.6 million in FFY 2006, and \$68.5 million in FFY 2007.

Draft bill language for the FFY 2007 supplemental appropriations bill, which is scheduled for mark-up on March 15, 2007, includes a provision which would rescind (cut) any FFYs 2005 or 2006 appropriations for Section 1011 unobligated as of September 30, 2006, which was the last day of FFY 2006. The rescission is intended to be used as an offset to help pay for additional State Children's Health Insurance Program (SCHIP) funding to be allotted to 14 states which lack sufficient SCHIP funds, including carryover funds from prior years, to meet their FFY 2007 SCHIP funding needs. California is not among these 14 states.

This proposed rescission of unspent Section 1011 funds would result in a major loss of revenue for all health providers, including the County's Department of Health Services (DHS) and other health providers in California. This is because delays in the program's implementation by the Department of Health and Human Services (HHS) and the administratively burdensome reimbursement claims process required by the Centers for Medicare and Medicaid Services (CMS) has greatly slowed the use of funds to reimburse providers' costs. For example, even though the MMA set a deadline of September 1, 2004 for HHS to establish a process under which providers may request Section 1011 payments, HHS did not publish its guidance to implement Section 1011 in the Federal Register until May 13, 2005. Moreover, that guidance did not allow providers to claim reimbursement for any allowable costs which were incurred before May 10, 2005 – more than seven months after FFY 2005 began. As a result, only \$58 million of the \$250 million in total FFY 2005 funding was used to reimburse costs incurred in FFY 2005, and California alone had \$58.8 million in unexpended FY 2005 funding.

California and other states also would have a substantial amount of unobligated or unexpended FFY 2006 Section 1011 funds as of September 30, 2006. This is because there is a time lag in claiming and receiving Section 1011 reimbursement for undocumented immigrant emergency medical costs. Under CMS guidelines, providers have up to 180 days after the end of a quarter to submit claims, which means that most FFY 2006 claims are unlikely to be paid until after September 30, 2006. In fact, the County received a \$3.2 million Section 1011 payment on February 28, 2007 for its claim for the third quarter of FFY 2006, which ended on June 30, 2006.

Similar to past proposals to cut funding for the former State Legalization Impact Assistance Grant, which reimbursed legalized alien costs, and the State Criminal Alien Assistance Program, Section 1011 is being targeted for cuts because a relatively few states receive most of the total funding. California, Texas, and Arizona together have been allotted 64 percent of total Section 1011 funding.

It is inappropriate to rescind any unobligated Section 1011 funding from prior years because Section 1011 is one-time funding, which was intended to be available to reimburse providers in each state until all funding was used without regard to fiscal year. It is ironic that unobligated Section 1011 funds, in effect, should be reallocated to SCHIP – a program which allows states to carry over unobligated funds for up to three fiscal years. That is, states still can spend their unused SCHIP funds from FFYs 2005 and 2006 through the end of FFY 2007.

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Based on the policy in the Board-adopted Federal Agenda to support Federal reimbursement of the costs of emergency medical care provided to undocumented immigrants, **the County's Washington, D.C. advocates will oppose the proposed rescission of FFY 5005 and 2006 Section 1011 funds which, otherwise would be available to reimburse the County's undocumented immigrant emergency medical costs, including costs that will be incurred in future years.**

We will continue to keep you advised.

DEJ:GK  
MAL:MT:acn

c: All Department Heads  
Legislative Strategist